

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15565 of 2008

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Smt. Nitu Kumari W/o Sri Ram Kumar Jha, Resident of village – Mahuli, P.S. –
Baheri Panchayat- Sasari – Turki Block – Baheri, District – Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Director, Integrated Child Development Scheme, Social Welfare Department, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The Collector, Darbhanga.
5. The District Programme Officer, Darbhanga.
6. The Sub Divisional Officer, Darbhanga.
7. The Deputy Director Welfare, Darbhanga Division, Darbhanga.
8. The Child Development Project Officer, Baheri, District – Darbhanga.
9. The Mukhiya Panchayati Raj Susari Turki, Block – Baheri, P.S. Baheri, resident of village – Susari, P.O. Bitholi, District – Darbhanga.
10. The Panchayat Secretary, Panchayati Raj Susari Turki, P.S. Baheri, PO – Mahuli, via Bahea, District – Darbhanga.
11. Smt. Radha Devi W/o Sri Krishna Kumar Jha, resident of village – Mahuli, P.S. Baheri, P.O. – Mahuli, District – Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanat Kumar Mishra

For the Respondent/s : AC to Addl. Advocate General – 4
Mr. Vivek Anand Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 03-04-2017

Heard Sri Sanat Kumar Mishra, learned counsel for the petitioner, learned A.C. to Addl. Advocate General – 4 as well as Sri Vivek Anand Kumar, learned counsel who has appeared on behalf of respondent no. 11.

2. The petitioner has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a



prayer to quash a decision of the Aam Sabha dated 07-06-2007, whereby; the claim of the petitioner for being appointed as Anganwari Sevika in Mahuli (Madhya) Anganwari Centre was turned down on the ground that mother of the petitioner was Anganwari Sevika in different Centre and father of the petitioner was in government service.

3. A plea has been taken that in the merit list, petitioner's name was included at serial no. 2 and the candidate, who was placed at serial no. 1, was not eligible to be considered and her case was rejected. Similarly, petitioner's claim was rejected on the plea that her parents were in service and ignoring the case of the petitioner, the person, who was having much lesser marks than the petitioner, i.e. respondent no. 11, was selected. The selection of respondent no. 11 was challenged by the petitioner before the District Magistrate and the District Magistrate initially directed the concerned Child Development Project Officer (hereinafter referred to as C.D.P.O.) to take step for considering the selection of the petitioner after cancelling the selection of respondent no. 11. While the matter was pending subsequently, a clarificatory order was issued and earlier cancellation order was cancelled on the plea that as per Guideline of Anganwari Sevika and Sahayika of 2006, particularly Clause 3 (ड) of the Guideline, the petitioner was rightly not considered for being selected.



4. Learned counsel for the petitioner, by way of placing reliance on a Single Bench order of this Court passed in C.W.J.C. No. 3981 of 2008 (Anita Kumari vs. The State of Bihar & Ors.) dated 21-05-2010, has argued that the same clause was considered by a Bench of this Court and this Court had held that such provision was contrary to Article 14 of the Constitution of India. A copy of the order of this Court dated 21-05-2010 has been brought on record, vide **Annexure – P/13** to the supplementary affidavit filed by the petitioner on 24th March, 2017. On aforesaid ground, a prayer has been made to direct for cancelling the selection of respondent no. 11 and in her place, petitioner be selected.

5. In this case, separate counter affidavits have been filed on behalf of respondent-State as well as private respondent i.e. respondent no. 11.

6. Learned State Counsel has argued that the impugned selection was done on the basis of Guideline of Anganwari Sevika and Sahayika of 2006. In 2006 guideline for selection of Anganwari Sevika, there was a specific condition that a candidate, whose relative/parent/parents were in government service, was not required to be considered for being selected as Anganwari Sevika.

7. Sri Vivek Anand Kumar, learned counsel for respondent no. 11 has placed reliance on a Division Bench judgment



of this Court reported in **2016 (4) P.L.J.R. 155 (Nutan Kumari vs. The State of Bihar & Ors.)**. He submits that in the said case also, almost similar question was raised. In the said case, a reported case was considered i.e. **2010 (3) P.L.J.R. 68 (Sunita Kumari vs. The State of Bihar & Ors.)**, whereby; the clause in question was held *ultra vires*. The Division Bench of this Court had clarified the position that even if the said provision was declared *ultra vires*, the said order will have prospective effect and it will not apply retrospectively. According to learned counsel for private respondent, since in the present case, the respondent no. 11 has already been selected on the basis of decision taken in the Aam Sabha in the year 2007 and candidature of the petitioner was rejected in view of said provision i.e. Clause 3 (क) of the Guideline of 2006, the petitioner may not get any benefit on the basis of either order dated 21-05-2010 passed in C.W.J.C. No. 3981 of 2008 or the judgment of this Court reported in Sunita Kumari's case (*supra*).

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Considering the fact that the judgment, on which the petitioner has placed reliance, was passed in the year 2010 and candidature of the petitioner was rejected in the year 2007, the provision of the guideline, which was applicable on the date and respondent no. 11 was already selected, there is no



point to examine the matter.

The writ petition stands dismissed

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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